

- 15 IDENTIFYING AND NOTIFYING POTENTIAL PARTIES ABOUT PETITION:** This section discusses requirements and procedures for identifying and notifying parties that may be affected by issues raised by the petition. These procedures “begin the opening process.”
- 15.1 Correlation between petitioner responsibility to serve and Regional Office responsibility to notify:** The regulations require the petitioner to serve a copy of the petition on all parties known to be affected by issues raised by the petition. Section 2422.6(a) places additional responsibilities on the Regional Director to notify any labor organization, agency or activity that the petitioner has named as being affected by issues raised by the petition **and to make reasonable efforts to identify and notify any other labor organization, agency or activity affected by issues raised by the petition (initially discussed in [CHM 6.2](#)).**
- 15.2 Contents of notification:** Section 2422.6(b) requires Regional Directors to notify any labor organization, agency or activity affected by issues raised by the petition of:
- a. the name of the petitioner;
 - b. the description of the unit or employees affected by issues raised in the petition; and
 - c. a request that all affected parties advise the Regional Director in writing of their interest in the issues raised in the petition.
- Sample letters are discussed in [CHM 15.8](#) and [15.9](#).
- 15.3 Requirements for notification:** The region takes the following actions prior to notifying any labor organization, agency or activity identified as affected by issues raised in the petition:
- a. Review the petition carefully for sufficiency and clarity. The agent reviews the petition for compliance with the filing requirements and verifies that the petition is otherwise sufficient. Any labor organization, agency or activity notified of the petition by the region is entitled to understand from the attached petition what the petitioner is seeking. The purpose of the petition, description of unit affected by issues raised and the results the petitioner seeks have to “make sense.” [CHM 15.4](#) and [CHM 20.1](#).
 - b. Identify any labor organization, agency or activity that is affected by issues raised by the petition. Only after the petition is examined for sufficiency and clarity can the region properly identify parties that

may be affected by issues raised by the petition ([CHM 15.5](#)).

- c. Prepare the letters ([CHM 15.8](#) and [15.9](#)). These steps are described more fully below.

15.4 Notification to petitioner: The first step determines whether the petition is sufficient and can be opened. For a checklist on reviewing the sufficiency of petitions, see [CHM 5](#) and [20](#).

15.4.1 If the petition is defective and cannot be opened as described in [CHM 12.3](#), the region notifies the petitioner and sends a confirming letter in [Figure 12.3](#) or an Order to Show Cause, as appropriate.

15.4.2 If the petition is defective, but can be opened as described in [CHM 12.4](#), the region notifies the petitioner of the defects and sends a confirming letter as shown in [Figure 12.4](#). Since the petition can be opened, the region proceeds with steps “b” and “c” as outlined in [CHM 15.3](#).

15.4.3 If the petition is not defective, the region is not required to send the petitioner a separate acknowledgment of the filing. A copy of the region's notification letter(s) to the other parties is sufficient notification that the petition has been docketed and opened.

15.5 Identifying labor organizations, agencies or activities affected by issues raised by the petition:

15.5.1 Party as used in § 2422.6(a): “Party” as used in § 2422.6(a) applies to any labor organization, agency or activity identified by the parties as being affected by issues raised by the petition and any other labor organization, agency or activity that the Regional Director has identified and notified as affected by issues raised by the petition. (See also § 2421.11 for a general definition of party.)

15.5.2 Definition of “affected by issues raised”: The phrase “affected by issues raised,” as used in Part 2422, includes labor organizations, agencies, or activities having a connection to employees affected by, or questions presented in, a proceeding (See § 2421.21 for a general definition).

Examples of labor organizations, agencies or activities that may have a connection to employees affected by, or questions presented in a proceeding include:

- a. petitioners in related cases;
- b. agencies or activities whose employees are the subject of the

petition;

- c. agencies or activities whose employees may be affected by issues raised in the petition, such as agencies whose employees were affected by a reorganization;
- d. an incumbent labor organization (any labor organization that is the currently recognized or certified exclusive representative);
- e. a labor organization that has shown that it has an interest in representing employees in the unit involved, either:
 - (i) named in the petition;
 - (ii) designated by the agency or activity as having a possible interest in any of the employees in the unit;
 - (iii) named previously in a case closed within the past two (2) years involving the same employees;
- f. a labor organization that has shown that it has represented employees involved in the subject petition.
- g. national unions whose local unions are seeking to re-affiliate (see *New Mexico Army and Air National Guard*, 56 FLRA 145 (2000)).
- h. agencies at the departmental or command level when a reorganization emanates from the higher level organization and the reorganization may affect more than the unit that is the subject of the petition.

NOTE: Based on recent Authority case law there are potentially three types of parties subject to this provision: 1) A labor organization, agency or activity identified as “affected by issues raised” and is automatically permitted to participate in the petition as an incumbent labor organization or employing agency; 2) a labor organization, agency or activity that is required to intervene in the petition in accordance with §2422.8; and 3) parties that are “affected by issues raised” by the petition but who do not qualify as automatic parties or intervenors pursuant to § 2422.8. These parties are considered “interested parties” and are required to request to participate in the petition. See [CHM 17](#) for specific guidance on this issue and Utah Army National Guard, U.S. Department of the Army, Draper, Utah (Utah ARNG), an unnumbered Authority Decision denying an application for review in Case No. DE-RP-80021, (1999) and Long Beach Veterans Administration Medical Center,

Long Beach, California, 7 FLRA 434 (1981).

15.5.3 Checklist for identifying labor organizations, agencies or activities affected by issues raised by a petition: What follows is a checklist to aid Regional Office personnel in identifying labor organizations, agencies or activities affected by issues raised by a petition:

- a. Review the petition for procedural compliance with filing requirements (see [CHM 5](#) and [20](#)). If the petition appears to be filed in accordance with the regulations, make a list of the parties identified by the petitioner.
- b. Review the petitioner's statement of the issues raised by the petition and the results the petitioner seeks. Does the statement provided generally explain whether the petition is for one or more of the following purposes ([CHM 3](#)):
 - (i) an election to determine if employees in an appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative [§ 2422.1(a)(1)(i) and [CHM 3.2.1a](#)]; and/or
 - (ii) a determination of eligibility for dues allotment in an appropriate unit without an exclusive representative [§ 2422.1(a)(1)(ii) and [CHM 3.2.1b](#)]; or
 - (iii) an election to determine if employees in a unit no longer wish to be represented for the purpose of collective bargaining by an exclusive representative [§ 2422.1(a)(2) and [CHM 3.2.2](#)].
 - (iv) to clarify, and/or amend [§ 2422.1(b)]:
 - a recognition or certification then in effect ([CHM 3.3.1](#)); and/or
 - any other matter relating to representation ([CHM 3.3.2](#));
 - (v) to consolidate two or more units, with or without an election, in an agency and for which a labor organization is the exclusive representative [§ 2422.1(c) and [CHM 3.4](#)].
 - (vi) to decertify the exclusive representative pursuant to 5 U.S.C. 7111(f)(1) ([CHM 3.6](#));

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- c. Once the purpose is identified, review the petition and outline the unit:
 - (i) Does the petition describe the unit affected by issues raised in the petition; name the agency or activity involved; clearly define the geographic locations and classifications of the employees included (or sought to be included) in, and excluded (or sought to be excluded) from, the unit?
 - (ii) Does the petition reflect that the unit was previously certified?
- d. Check the certification database and other case records in the Regional Office for information about parties and an up-to-date description of the unit. Do these records reflect that there were other parties involved in previously filed cases? For instance, if the unit was recently certified, were there any intervenors in the original representation case? Are there other labor organizations at the agency/activity who participated as intervenors?
- e. Use the OPM reference, "Union Recognition in the Federal Government" if necessary, to check unit recognitions or certifications.
- f. Contact the petitioner and the employing agency/activity in accordance with the guidelines in [CHM 20](#). Discuss the petition with both parties (see [CHM 20.2](#) - *petitioner contact*, [CHM 20.4](#) - *party contact*) and ask whether either party knows of any other labor organization or agency/activity that could be affected by issues raised by the petition.
- g. Document the case file concerning the region's efforts to identify labor organizations, agencies or activities affected by issues raised by the petition, the region's determination/decision with respect to naming affected parties and an explanation of any adverse determination concerning potential parties (see also [CHM 15.12](#) and [CHM 26.2](#)).

The Regional Director determines whether a defective petition and/or a petitioner's failure to adequately identify affected parties delays processing the case ([CHM 12](#)).

If a labor organization, agency or activity is not identified at the outset, it is notified of the petition, in the form and manner indicated below, as soon as its interest becomes apparent. For purposes of initial communications, it is preferable to err on the side of notifying a potential party rather than on the

side of ignoring it.

- 15.6 Blanket requests for notice of “all” petitions:** Blanket requests for notice of “all” petitions are not honored. Similarly, blanket requests from National Level Agencies and Labor Organizations to be considered as a “party” in all representation proceedings are denied. **There are two exceptions**, noted below, pertaining to petitions affecting nationwide exclusive or agency-level consolidated bargaining units or petitions filed by a local labor organization placed in trusteeship.
- 15.7 Exceptions to blanket requests for all petitions:**
- 15.7.1 Petitions affecting nationwide exclusive or agency-level consolidated bargaining units:** [Appendix C](#) is a listing of all agencies and labor organizations which have nationwide exclusive recognition or a certification of consolidation of units at an agency level. Whenever a region receives a petition involving employees who are part of either a nationwide exclusive unit or an agency-level consolidated unit, the parties to the respective certifications are notified of the petition and thereafter, served with copies of all correspondence. As discussed in [CHM 4.7](#) and [14.2](#), such petitions are defective and amended if: 1) the parties to the certification are not on the caption of the petition and named as the petitioner(s); and 2) the party filing the petition is not authorized to represent the certified agency or labor organization. Regardless of the status of the petition, the parties to the certification are notified of the filing of the petition.
- 15.7.2 Petitions involving local labor organizations that have been placed in trusteeship:** Once a region learns that a local labor organization has been placed in trusteeship, the trustee is served with a copy of the petition (see [CHM 4.8](#), [CHM 6](#) and [15.8](#)). If the trustee seeks to intervene, s/he is permitted to do so with the right to file an application for review with the Authority ([CHM 17](#)).
- NOTE: Consistent with the policy set forth in [CHM 15.5.2](#), whenever a petition is filed to amend a recognition or certification to reflect a reaffiliation from one labor organization to another, Regional Offices notify the national union initially of the filing of the petition under § 2422.6. See [CHM 17.13.1](#) for a discussion on party status.***
- 15.8 Opening notification letters:** The letter notifying parties identified as being affected by issues raised by the petition serves to open the case. This letter notifies parties about the petition, provides information about participating in processing the petition and seeks specific information necessary for processing the case. The best practice is when the region contacts parties and potential parties telephonically before the region sends

out these letters ([CHM 20.4](#)).

NOTE: *There may be circumstances where it is not appropriate to send out opening letters even though the petition may not be defective. These cases do not appear as if they can be processed for substantive reasons and it is not be efficient to open them using the standard opening letters unless the petitioner can show why the petition should be processed. For instance:*

- a. *If it does not appear that the petition is timely filed, an Order to Show Cause requests the petitioner to explain why the case should be processed is more appropriate than sending out opening letters. All parties are offered an opportunity to file a position.*
- b. *An Order to Show Cause is an appropriate procedure to use when the petitioner has not established a question of representation in an election petition (i.e., petitioner seeks to sever a group of employees from an existing unit). The Order requests the petitioner to show cause why the current unit is inappropriate ([CHM 59](#)). All parties are offered an opportunity to file a position.*

In these cases, the Order to Show Cause is the act that “opens” the case. If the response to the Order to Show Cause raises issues that warrant processing the case further, the Regional Director issues the standard opening letters and the notice to employees. If not, the Regional Director issues a Decision and Order that includes sufficient facts and analysis to support the Regional Director’s legal conclusion(s) and dismisses the petition.

15.8.1 There are three types of notification letters:

- a. a joint letter to the employing agency and/or incumbent labor organization in election or dues allotment cases filed pursuant to § 2422.1(a) ([CHM 3.2](#)), (letter discussed in [CHM 15.9](#) and [Figure 15.9](#));
- b. a joint letter to the employing agency and/or incumbent labor organization in cases filed pursuant to §§ 2422.1(b) and (c) ([CHM 3.3](#) and [3.4](#)) (letter discussed in [CHM 15.8.2](#) and [15.8.3](#) and [Figure 15.8A](#)); and

Note: *an incumbent labor organization and an employing agency or activity are automatic parties to any petition [§§ 2422.8(d) and (e)]. See also [CHM 17.7](#). In a unit*

consolidation petition that seeks to consolidate units on an agency level or organizational level that is higher than where the current certifications lie, the agency or activity and the union which will be named on a Certification of Consolidation of Units are automatic parties. In addition, the local activities and unions named on the certifications which the petitioner seeks to consolidate are also automatic parties since they are the actual parties to the certification and “hold the cert.” These parties are notified of the petition (send a [Figure 15.8A](#) letter, but no posting). See also [CHM 20.1.6](#) and [20.4.3](#).

- c. a joint letter to other labor organizations, agencies or activities identified by the petitioner or the Regional Director as being affected by issues raised in the petition (letter discussed in [CHM 15.8.2](#) and [15.8.3](#) and [Figure 15.8B](#)). This letter is used for notifying potential parties in petitions filed for any purpose.

Note: these potential parties are required to intervene pursuant to §§ 2422.8(c) and (f). See also [CHM 17.7](#).

15.8.2 [Figures 15.8A](#), [15.8B](#) and [15.9](#) are sample notification letters that can be modified if necessary, for any petition or combination of petitions, and/or potential party. Note that any of these letters may be combined for petitions consolidated for processing. If the region modifies a sample letter, the region ensures that the letter includes the following, as required by § 2422.6(b):

- a. the name of the petitioner;
- b. the description of the unit or employees affected by issues raised in the petition; and
- c. a request that all affected parties advise the Regional Director in writing of their interest in the issues raised in the petition.

In addition, the letters:

- d. designate whether the addressee is an automatic party to the petition or is a labor organization, agency or activity that may be affected by the issues raised in the petition.
- e. provide information that clarifies the processing of and participation in representation proceedings. This includes describing requirements for intervention. For instance, the letter in [Figure 15.8B](#) emphasizes that no party may participate in any proceedings

unless it requests to intervene in accordance with § 2422.8 (see [CHM 17](#)).

- f. outline the parties' duty to furnish information (see § 2422.15 and [CHM 21](#)).
- g. request a copy of all relevant correspondence concerning the issues raised in the petition and a copy of any existing or recently expired collective bargaining agreement(s) covering any of the employees affected by the issues raised in the petition.
- h. request names, mailing addresses and telephone numbers of all labor organizations, agencies or activities known to be affected by the issues raised in the petition. The letter notes that failure to disclose the existence of another party affected by issues raised in the petition may affect the processing of the petition.
- i. emphasize the time limits for filing intervention requests or cross-petitions.
- j. direct parties to complete and return FLRA Form 75, Designation of Representative, as appropriate.

15.8.3 [Figure 15.8A](#) is used for an employing agency or activity, and/or an incumbent labor organization in petitions filed pursuant to §§ 2422.1(b) and (c). A cross-petitioner is also sent Figure 15.8A. [Figure 15.8B](#) is used for any petition involving other affected labor organizations or agencies/activities. In keeping with the intent of the 1996 revisions to the regulations, these notification letters were intended to be prepared and mailed quickly and easily. One letter is used for all addressees whose potential status is similar; letters to each party are not required. These letters, like the "generic" petition and the notice of petition discussed in [CHM 16](#) are all part of expedited opening procedures.

15.9 Notification of employing agency or activity and incumbents in petitions seeking elections or a determination of eligibility for dues allotment:

15.9.1 Employing agency notification: After the region docketed a petition seeking an election or a determination of eligibility for dues allotment (see [CHM 3.2](#)) and checks the petitioner's prima facie showing of interest, the region telephonically informs the activity about the petition (see [CHM 20.4.2](#)). The region confirms the conversation by a letter that provides the information described in [CHM 15.8](#), and instructs the activity to furnish the following information to the Regional Director and all affected parties:

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- a. names and address of any parties that may be affected by issues raised by the petition;
- b. a current alphabetized list of employees with their job classifications included in or excluded from the existing unit or claimed unit affected by issues raised in the petition [see § 2422.15(b)]; the letter requests that the list be current as of the payroll period ending immediately preceding the date that the petition was filed;
- c. a completed FLRA Form 75, Designation of Representative.

If appropriate, the region also directs the activity to post copies of a notice to all employees. Posting procedures are described in [CHM 16.2](#) (see § 2422.7).

- 15.9.2 Incumbent notification:** If there is an incumbent labor organization, the region informs the representative named on the petition form about the petition. An incumbent is an automatic party to the proceeding unless it files a disclaimer of interest. See [CHM 17.7.3](#).
- 15.9.3 Written confirmation and notification:** [Figure 15.9](#) is a sample letter to an agency/activity and if appropriate, the incumbent labor organization involved in a petition seeking an election or dues allotment (both parties are automatic parties in the proceeding and are not required to “intervene”). [CHM 20.5](#). Note that if the petition is seeking an election in a unit that is currently represented by an exclusive representative, the letter includes a statement that the Regional Director has determined that there was a prima facie showing of interest and that the petitioner has achieved “equivalent status” with the incumbent. *U.S. Department of Defense Dependents School, Panama Region*, 44 FLRA 419 (1992).
- 15.10 Parties that may be affected by issues raised but may not qualify under § 2422.8 to intervene:** Parties that may be affected by issues raised but may not qualify under § 2422.8 to intervene may only be served an opening letter under the circumstances described in [CHM 15.5.2g](#). In order to participate in the case, these parties are required to request status as interested parties. See [CHM 17.13](#) for detailed information about “interested parties.”
- 15.11 Effect of amended petitions:** Amending a petition could change the parties who are affected by issues raised by the petition. Whenever a petition is amended, the region re-examines the potential parties that may be affected by issues raised by the amended petition.

- 15.12 Regional Director's responsibility after notification:** The 1996 revisions to the regulations streamline and make more flexible the rules addressing the representational concerns of agencies, labor organizations and individuals.
- 15.12.1 Incumbent labor organizations and employing agencies/activities:** If a labor organization, agency or activity has been identified as an incumbent or the employing agency, the party is automatically a party to the case. In such instances, the Regional Director confirms whether or not the party(ies) will participate in the case. See e.g., *U.S. Department of the Interior, National Park Service*, 55 FLRA 466 (1999) where the Regional Director incorrectly identified two labor organizations that represented employees affected by a reorganization as potential intervenors rather than incumbents.
- 15.12.2 Potential parties that are required to intervene:** The provision that the Regional Director notify a labor organization, agency or activity that it may be affected by issues raised by the petition does not require the region to confirm a potential party's participation in a petition. To do so could delay processing the case and places a burden on the Regional Director that exceeds the intent of the regulation. See [CHM 20.4](#) which requires the agent assigned to handle the petition to telephonically contact parties that may be affected by issues raised in a petition as soon as possible, usually prior to sending the opening letters.

Any labor organization, agency or activity notified by the Regional Director that it may be affected by issues raised by a petition is permitted a reasonable opportunity to become a party to the case. For example:

- a. if a labor organization, agency or activity has been identified and notified of a petition and contacts the Regional Office for information, the region advises it of the status of the case. If the labor organization, agency or activity states it intends to intervene pursuant to § 2422.8, the agent reviews the requirements for intervention with that party.
- b. If, during processing of the case, the Regional Director identifies a substantive issue that affects parties who have not been previously identified as potential parties or that changes the status of a party identified, the Regional Director **notifies** these parties of the changes in the issues before him/her. See *U.S. Department of the Interior, National Park Service*, 55 FLRA 466 (1999).
- c. Any labor organization that has been identified that it is the incumbent of the employees in the unit (see [CHM 17.7.3](#) for a definition of "incumbent") or any employing agency or activity that has been identified as an employing agency pursuant to § 2422.8(e)

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are automatic parties and the region confirms their participation before taking action pursuant to § 2422.30. (i.e., a disclaimer by the incumbent).

NOTE: Thus, before taking action pursuant to § 2422.30, the Regional Director has discretion to, and in some cases, is required to follow up with any labor organization, agency or activity that may be affected by issues raised in the petition. See also [CHM 17.5](#) and [20.8](#).